5 RS. COURT FEE 5 रु. भारत INDIA पांच रुपये FIVE RUPEES CANCELLED 5 RS. COURT FEE 5 रु. भारत INDIA पांच रुपये FIVE RUPEES

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 2599 OF 2004.

PETITIONER :- Ishwar Dayal Philainder(wrongly written as Parlender), son of Patras, aged about 39 years, Caste Christian, resident of Ajadpara, Thakhatpur, District Bilaspur (Chhattisgarh)

P.R. No. 2608/04 Presented by Shri Pandey Advocate dated 16-8-04

VERSUS

RESPONDENTS :-1. Manoj Linkan, aged 40 years,

2. Marshal Linkan, aged 38 years, Both son of I. Linkan, Caste Urano,Christian, both resident of Ajadnagar, Takhatpur, District Bilaspur (Chhattisgarh)

3. State of Chhattisgarh, Through Collector, Bilaspur, District Bilaspur (Chhattisgarh).

4. Seventh Civil Judge Class-II, Bilaspur (Chhattisgarh).

P2/8/04

PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

(30)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. No. 2599/2004

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

14-9-2004

Shri H. B. Agarwal, counsel for the petitioner.

Heard.

The petitioner has preferred this writ petition under Article 227 of the Constitution of India being aggrieved by the order dated 16.7.2004 passed by the Seventh Civil Judge Class-II, Bilaspur in Civil Suit No. 308-A/2002 whereby the application filed by the Respondents No. 1 and 2 (herein this petition) under Order 22 Rule 3 of the Code of Civil Procedure was allowed.

The brief facts leading to filing of this writ petition are that one Punnilal had filed a suit for declaration and correction of the sale deed dated 27.11.1991 during the pendency of the suit said Punnilal died, therefore the respondents No. 1 and 2 moved an application for bringing them as legal heirs of Punnilal on record on the strength of a 'Will' alleged to have been executed in their favour by Late Shri Punnilal. Said application was objected by the petitioner by filing a written reply stating that the said 'Will' is forged and has not been executed by Late Shri Punnilal and the Respondents No. 1 and 2 are not legal heirs of Late Shri Punnilal and that the said 'Will' is not relating to the property in dispute. Learned Civil Judge after hearing the counsel for the parties passed the impugned order.

Learned counsel for the petitioner submits that the petitioner raised objection regarding genuineness of the 'Will' and opposed that the respondents No. 1 and 2 are not legal heirs of Late Shri

(31)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. 2599/2004

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Punnilal in that situation learned trial Court ought to have conducted a summary enquiry as envisaged under Order 22 Rule 5 of the C.P.C. but without conducting any enquiry it has directly allowed the application.

Having heard learned counsel for the petitioner and having regard to the facts and circumstances of the case it is observed that the petitioner may raise such objections in written statement as no enquiry was conducted by the trial Court before passing the order on the application filed by the Respondents No. 1 and 2 under Order 22 Rule 5 of the C.P.C.

With the above observation this petition is disposed of finally.

Consequently M(W)P No. 2307/2004 and I.A.No. 5803/2004 stand disposed of.

Sd/-
L.C. Bhadoo
Judge